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No. 81-9

IN THE

Supreme Court of the United States

October Term, 1981

STATE OF WASHINGTON, et al.,
Appellants,

v.

SEATTLE SCHOOL DISTRICT NO. 1, et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF AMICI CURIAE

Grant L. Anderson, Lee Bailey, Edward Diamond, D.V.M., H. Eugene Hall, M.D., Mark E. Hoehne, Levy S. Johnston, Roy E. Jorgensen, Walter H. Lewis, Roger H. Lincoln, Margaret R. McCarthy, Robert W. Randall, Philip B. Swain, Dale W. Thompson, Ollie Mae Wilson

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Cases

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U.S. Commission on Civil Rights, With All Deliberate Speed: 1954-19?? at 1 (1981) 8, 9

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MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

This motion for leave to file the accompanying Brief as amici curiae is respectfully made pursuant to Rule 36 of this Court. Written consent to the filing of this brief has been granted by appellee school districts and appellee Seattle intervenor plaintiffs, and a true copy of

such consent is attached to the certificate of service filed herewith. Amici expect that written consent of the other parties to this proceeding is forthcoming.

The nature of amici's interest in this matter and amici's reasons for seeking this leave are stated in the accompanying brief under "Interest of Amici"; that discussion is incorporated in this motion.

Dated January 25, 1982.

Respectfully submitted,

HENRY M. ARONSON

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Anderson, et al

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BRIEF OF AMICI CURIAE

INTEREST OF AMICI

Amici Grant L. Anderson, Lee Bailey, Edward Diamond, D.V.M., H. Eugene Hall, M.D., Mark E. Hoehne, Levy S. Johnston, Roy E. Jorgensen, Walter H. Lewis, Roger H. Lincoln, Margaret R. McCarthy, Robert W. Randall, Philip B. Swain, Dale W. Thompson, and Ollie Mae Wilson are individual

citizens of the State of Washington who believe in the educational value of desegregated public schools. Each of these 14 amici is one of the 15 members of the Washington State Board of Education ("State Board"). With the exception of one individual, who in his official capacity represents Washington State's private schools on the State board, amici represent a geographical cross-section of private persons in the State of Washington, since the State Board consists of two persons from each of Washington's seven Congressional districts. In their official capacities, the members of the State Board neither authorized nor consented to the filing on their behalf of the appeal in this case, see J.S. D-3.

The State Board of Education in October 1978 adopted the language of the Joint Policy Statement with the Washing-

ton State Human Rights Commission, J.A. 65-69, defining racial isolation and declaring the responsibility and duty of Washington school boards "to assign children to buildings in ways which result in the maximum desegregation possible by whatever means that are necessary." These amici as individuals subscribe to the views expressed in the Joint Policy Statement.

Also in October 1978, the State Board passed a resolution condemning Initiative 350 as "motivated by the sole purpose of overturning the Seattle Plan for desegregation of that District's schools" and "harmful for education." J.A. 69-70 (The Joint Appendix fails to clearly indicate the division (in the middle of J.A. 69) between the Joint Policy Statement and the Resolution, and omits the word "harmful" at J.A. 70.) See Pl. Ex. 117.

Amici seek to present to the Court some of the educational and social policy reasons for public school desegregation, including the views of the U.S. Commission on Civil Rights, which the parties, due to their concentration on legal issues, have not emphasized.

SUMMARY OF ARGUMENT

Amici believe that this Court should affirm the Court of Appeals' judgment in this case, 633 F.2d 1338 (9th Cir. 1980), so as to encourage the voluntary action of local authorities designed to promote equal educational opportunities and protect constitutional rights. First, there are important and significant educational advantages for all children, and especially minority children, in a school system which is desegregated. Second, the argument that mandatory desegregation is counterproduc-

tive because it causes massive "white flight" is a dangerous myth, often cited as a reason to maintain segregation, which must be dispelled. Third, if laws like Initiative 350 are permitted to stand, then the most effective desegregation plans--those devised and supported by local school authorities--will give way to exclusively court-ordered plans, which are not infrequently accompanied by hostility and turmoil. This Court must not block the successful, voluntarily-enacted desegregation plans of Seattle, Tacoma, and Pasco, and plunge those cities into the years of racially polarizing, divisive litigation that would certainly follow.

ARGUMENT

A. Initiative 350 Would Interfere with the Nation's Essential Task to Desegregate Public Schools

Amici agree with the U.S. Commission on Civil Rights that

> school desegregation is the single most important task confronting the Nation today in the field of civil rights. Any retreat in our efforts to achieve this goal will seriously harm our efforts to move forward in other civil rights areas. Further, ... progress in desegregating our Nation's schools will not be achieved without the clear support and leadership of government officials at the national, State, and local levels. ... [T]hose in positions of responsibility [must] make such a commitment.
>
> The commitment ... must be made today so that children may be educated in environments where they will come to know one another as human beings and to learn that all people are truly created equal....

U.S. Commission on Civil Rights, With All Deliberate Speed: 1954-19?? at 1 (1981) (hereinafter cited as With All Deliberate Speed).

There is no longer serious doubt that school desegregation can be correlated with long-term achievement gains for minority students, with no corresponding decline in white students' performance. See, e.g.,

the studies cited in With All Deliberate Speed, supra, at 40-44. And of equal or greater significance than scores on standardized tests is the fact that minority students who have attended desegregated schools succeed in college at significantly higher rates than those who have attended segregated schools and have greater social mobility, id. at 43-44.

It does not deemphasize the importance of teaching fundamental skills to all children to point out that the public schools have yet another critical task: preparing young people to become citizens in this Nation's ethnically diverse democracy. We think it self-evident that enhanced interracial understanding, so crucial to curing some of the Nation's social ills, can only occur through the prolonged exposure, from an early age, to persons of different backgrounds. Respect

and appreciation for different ethnic groups simply cannot be taught strictly from a book--it must be learned from first-hand experience.

B. School Desegregation is a Prerequisite to Achieving Residential Integration

All who believe in public school desegregation would prefer that it could be accomplished without "busing". But research shows that without school desegregation, housing segregation will only worsen.

It is nearly an article of faith in the popular media that busing causes so much "white flight" from public school systems that it is counterproductive. Much of this misconception is attributable to failure to recognize that with or without desegregation, white enrollment in urban areas has declined sharply over the past two decades and continues to do so. But in fact, while there is no dispute that white

enrollment loss increases in most school systems in the year of implementation of a mandatory desegregation program, the long-term effects of school desegregation appear neutral or even positive. Rossell, School Desegregation and Community Social Change, 57 Law & Contemp. Probs. 133, 163-67 (1978). As initial apprehensions decrease and income constraints take precedence, some whites return to the public schools from private schools. More importantly, however, the guarantee of desegregated schools helps retain white families who would otherwise move out of minority or "transition"-area schools. Over time, segregated schools result in as much or more white enrollment loss than desegregated schools, because without school desegregation, whites in greater numbers leave the areas undergoing change from majority to minority status, and are

not replaced.

Thus, failure to desegregate schools only feeds the relentless, mutually reinforcing dynamic between school and housing segregation, and guarantees that schools will become more segregated. The District Court in this case, after extensive testimony and voluminous documentary evidence, recognized these facts. J.S. at A-25 (Finding of Fact 11.3). See, e.g., Pl. Ex.. 36, Tr. 133; Pl. Ex. 37, Tr. 132; Pl. Ex. 93, Tr. 357; and Pl. Ex. 138, Tr. 2005.

Because residential segregation will only worsen without school desegregation, and in turn intensify school segregation, school desegregation must continue so as to permit residential integration to occur.

C. Locally Controlled Rather than Court-ordered School Desegregation Must be Favored.

Finally, if this Court upholds

Initiative 350, it will likely be replicated all over the country. As a result, only court-ordered, and not school board-adopted, desegregation will occur in the future. This Court should encourage and protect the efforts of local officials toward school desegregation, especially since local leadership is such a critical element in the success and peaceful implementation of desegregation plans. The experience of Seattle, Tacoma, and Pasco, where desegregation has been peaceful and has successfully been "institutionalized" by the school system, stands in sharp contrast to the experience in Boston, Cleveland, and other cities where local political leadership fomented resistance to court orders and fanned the fires of racial fears.

Once cities have desegregated their schools and experienced desegregation's

benefits, there is widespread distaste for returning to segregation. See, e.g., Martin v. Charlotte-Mecklenburg Bd. of Educ., 626 F.2d 1165 (4th Cir. 1980), cert. denied, 68 L.Ed.2d 238 (1980) (upholding school board's authority to continue desegregation plan where federal court's equitable powers have lapsed).

CONCLUSION

For the reasons stated above, amici respectfully submit that the judgment of the Court of Appeals should be affirmed.

Dated this 25th day of January, 1982.

Respectfully submitted,

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